

## ARTICLE 12

### CONTROL OF SHOPPING CARTS

Section	Subject Matter
6-12.01	DEFINITIONS
6-12.02	ENFORCEMENT
6-12.03	PROHIBITION AGAINST REMOVAL OR POSSESSION OF ABANDONED CART
6-12.04	MANDATORY SIGN REQUIREMENTS ON CARTS AND PREMISES
6-12.05	MANDATORY PHYSICAL MEASURES TO PREVENT THE REMOVAL OF CARTS
6-12.06	PLAN PROVIDING ALTERNATIVE TO MANDATORY PHYSICAL MEASURES TO PREVENT THE REMOVAL OF CARTS
6-12.07	PROPOSED MODIFICATION TO EXISTING PHYSICAL MEASURES OR A PREVIOUSLY- APPROVED ALTERNATIVE PLAN
6-12.08	INADEQUATE CART CONTROL MEASURES AND DIRECTIVE TO MODIFY MEASURES
6-12.09	PENALTIES FOR FAILING TO IMPLEMENT PHYSICAL CART CONTROL MEASURES, AN APPROVED ALTERNATIVE PLAN, OR DIRECTED MODIFICATION
6-12.10	IMPOUNDMENT OF ABANDONED CARTS
6-12.11	COSTS AND FINES FOR IMPOUNDED CARTS
6-12.12	APPEALS

Section	Subject Matter
6-12.13	DISPOSITION OF CARTS AFTER THIRTY DAYS
6-12.14	SEVERABILITY AND VALIDITY
6-12.15	EFFECTIVE DATE

## ARTICLE 12

### CONTROL OF SHOPPING CARTS

#### SEC. 6-12.01 DEFINITIONS.

- a. Cart. Cart shall mean a basket, which is mounted on wheels or a similar device, provided by a business establishment for use by a customer for the transporting of goods of any kind.
- b. Owner. Owner shall mean any person or entity, which in connection with the conduct of a business, owns, possesses, or makes one or more carts available to customers or to the public. For purposes of this Article, owner shall also include the owner's on-site or designated agent that provides the carts for use by its customers.
- c. Premises. Premises shall mean the entire area owned and utilized by the business establishment that provides carts for use by customers, including any parking lot or other property provided by the owner for customer parking.
- d. Abandoned Cart. Abandoned cart shall mean any cart that has been removed without written permission of the owner, agent or on-duty manager from the premises of the business establishment, regardless of whether it has been left on either private or public property.

SEC. 6-12.02 ENFORCEMENT. The Director of Public Works, or designated City staff, shall oversee the implementation, administration and enforcement of this Article.

#### SEC. 6-12.03 PROHIBITION AGAINST REMOVAL OR POSSESSION OF ABANDONED CART.

- a. It shall be unlawful to either temporarily or permanently remove a cart from the premises, of a business establishment without the express prior written approval of the owner or on-duty manager of the business establishment.
- b. This section shall not apply to carts that are removed for repair or maintenance.

SEC. 6-12.04 MANDATORY SIGN REQUIREMENTS ON CARTS AND PREMISES. Within ninety (90) days of the effective date of this article, owners of one or more carts shall place signs on carts and premises as follows:

- a. Required signs on carts. Every cart owned or provided by any business establishment in the City of Hayward must have a sign permanently affixed to it that contains the following information:
  - (1) Identification of the owner of the cart or the name of the establishment, or both;

- (2) Notification of the public of the procedure for authorized removal of the cart from the premises;
  - (3) Notification of the public that the unauthorized removal of the cart from the premises of the business establishment is a violation of state law;
  - (4) Telephone number to contact to report the location of an abandoned cart or an address for returning the cart to the owner or business establishment.
- b. Required signs on premises. Signs shall be placed in pertinent places near doors to warn customers that cart removal is prohibited and constitutes a violation of state and local law.

**SEC. 6-12.05 MANDATORY PHYSICAL MEASURES TO PREVENT THE REMOVAL OF CARTS.** Within ninety (90) days of the effective date of this article, owners of retail businesses that utilize carts with five thousand (5,000) or more square feet of space enclosed within a building, shall put in place one or more of the following physical measures to prevent the removal of carts from their premises:

- a. Disabling devices on all carts, activated when they cross an electronic or other barrier at the perimeter of the premises or
- b. Physical barriers located at doors, around loading areas or other defined perimeters, that prevent the passage of carts beyond the barriers. Barriers may also be placed on the carts themselves to prevent them from passing through door openings or other defined perimeters and

In addition to (a) or (b) above, businesses shall designate personnel during all hours of retail operation whose responsibility it is to monitor and prevent the removal of carts from the premises.

**SEC. 6-12.06 PLAN PROVIDING ALTERNATIVE TO MANDATORY PHYSICAL MEASURES TO PREVENT THE REMOVAL OF CARTS.** Within sixty (60) days of the effective date of this article, owners who do not wish to implement one of the mandatory measures described in Section 6-12.06 may present a plan to the Director of Public Works setting forth proposed alternative measures to achieve cart control. If the Director deems the proposed measures acceptable, owner will be required to implement the plan within sixty (60) days of written notification. If the Director deems the proposed measures unacceptable, owner will be required to implement one of the physical measures described in Section 6-12.05 within sixty (60) days of written notification. The decision of the Director of Public Works shall be final unless appealed in writing within ten (10) days of written notification, pursuant to Sec. 6-12.12

**SEC. 6-12.07 PROPOSED MODIFICATION TO EXISTING PHYSICAL MEASURES OR A PREVIOUSLY-APPROVED ALTERNATIVE PLAN.** Should an owner wish to modify existing physical measures or a previously-approved alternative plan, the proposed modification shall be submitted to the Director of Public Works for review. Should the Director approve the proposal, owner shall implement proposed changes within thirty (30) days of written notification. The decision of the Director of Public Works shall be final unless appealed in writing within ten (10) days of written notification, pursuant to Sec. 6-12.12.

SEC. 6-12.08 INADEQUATE CART CONTROL MEASURES AND DIRECTIVE TO MODIFY MEASURES. Should the Director of Public Works find that an owner's physical measures or alternative plans are not producing satisfactory results, the Director shall have the authority to direct owner to modify measures to ensure more satisfactory cart control results. Modified measures shall be put in place within thirty (30) days of written notification of the Director's decision. The decision of the Director of Public Works shall be final unless appealed in writing within ten (10) days of written notification, pursuant to Section 6-12.12.

SEC. 6-12.09 PENALTIES FOR FAILING TO IMPLEMENT PHYSICAL CART CONTROL MEASURES, AN APPROVED ALTERNATIVE PLAN, OR DIRECTED MODIFICATION. Any owner who fails to implement physical cart control measures, an approved alternative plan or a directive to modify measures shall be subject to enforcement procedures as provided in Chapter 1, Article 3, Section 1-3.00 of this Code. The remedies provided in this Article shall be cumulative and not exclusive.

SEC. 6-12.10 IMPOUNDMENT OF ABANDONED CARTS. The Director of Public Works shall have authority to retrieve and impound carts located outside the premises of a business establishment as follows:

- a. A cart with the signs required by Section 6-12.04 may be impounded if it has not been retrieved after three days' notice to the owner of the discovery and location of the cart. The notice to the owner shall include information regarding procedures and costs for retrieval and storage of the cart. In instances where the location of the cart will constitute a safety hazard, the Director shall have the authority to immediately retrieve the cart from public or private property.
- b. The Director shall have the authority to immediately retrieve and impound a cart with the required signs if the owner is provided with actual notice of the impoundment and the location of the cart within 48 hours following the impoundment. If the owner reclaims the cart within three business days following notice of the impoundment, the cart shall be released to the owner at no charge whatsoever, including any impound or storage fees or fines that would otherwise be applicable pursuant to Section 6-12.11. Any cart reclaimed within the three-business-day period shall not be deemed an occurrence for purposes of Section 6-12.11.
- c. A cart without the signs required by Section 6-12.04 may be retrieved immediately and impounded.

SEC. 6-12.11 COSTS AND FINES FOR IMPOUNDED CARTS. The owner of any cart impounded by the City pursuant to Section 6-12.10 shall be liable for the City's actual costs of retrieval and storage, as the City Council may adopt by resolution from time to time relating to enforcement of this Article. In addition, the City may fine the owner of an impounded cart fifty (\$50) dollars for each occurrence in excess of three occurrences during a specified six-month period. A single occurrence includes all carts impounded in a 24-hour period. The decision of the Director of Public Works to impose costs and/or a fine shall be final unless appealed in writing within ten (10) days of written notification, pursuant to Sec.6-12.12.

SEC. 6-12.12 APPEALS. An owner shall be entitled to appeal a decision by the Director to impose fines and/or costs or to implement cart control measures to the City Manager. The City Manager shall hear and consider all relevant evidence, including objections and protests offered on behalf of the owner. The decision of the City Manager shall be final.

SEC. 6-12.13 DISPOSITION OF CARTS AFTER THIRTY DAYS. Any cart not reclaimed from the City within thirty (30) days after notification to the owner and any unmarked cart shall be sold or otherwise disposed of by the Director of Public Works.

SEC. 6-12.14 SEVERABILITY AND VALIDITY. If any section, subsection, paragraph or sentence of this article, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article.

SEC. 6-12.15 EFFECTIVE DATE. This article shall become effective thirty (30) days after adoption by the City Council.